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4 Attorney for the Department of Insurance

5  
6 **BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE**  
7 **STATE OF MONTANA**

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8 IN THE MATTER OF:	)	CASE NO. INS 2006-31
9	)	
10 PRUDENT CHOICE,	)	<b>CONSENT AGREEMENT</b>
STEPHEN T. COOK, and/or their agents	)	<b>AND FINAL ORDER</b>
and representatives,	)	
11	)	
12 Respondents.	)	

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13 The State Auditor and Commissioner of Insurance of the state of Montana  
14 (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code  
15 Ann.(MCA) § 33-1-101, *et seq.*, and § 2-4-603, MCA, hereby sets forth the following allegations  
16 which justify and support disciplinary treatment, conclusions of law, agreement and final order:

17 **FACTUAL ASSERTIONS**

18 1. Respondent, PrudentChoice LLC (Prudent Choice), is an entity that offers for sale a  
19 medical care discount card. Respondent Stephen T. Cook is the CEO, President, CFO and  
20 treasurer of Prudent Choice. At all times material hereto the above-named Respondents  
21 conducted business at 2040 Main Street, Suite 700, Irvine, CA 92614.

22 2. All entities offering for sale medical discount cards were required to apply for a  
23 certificate of registration by October 1, 2005. § 33-38-105(8), MCA.

24 3. Respondents did not timely apply for certificate of registration by October 1, 2005 as  
25 required by Section 33-38-105(8), MCA, but filed an application that was received by the  
26 Department on or about October 18, 2005.

27 4. On October 20, 2005, the Department's Chief Examiner sent a letter to Respondent  
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1 Stephen T. Cook advising him that the said application for certificate of registration was  
2 received and that he/Prudent Choice should not commence or continue operations as a supplier of  
3 medical care discount cards until such time as a certificate of registration was issued on behalf of  
4 Prudent Choice; and further advising that commencing or continuing to operate as a supplier of  
5 medical discount cards without the requisite certificate of registration after October 15, 2005,  
6 may result in disciplinary action by the Department.

7 5. On October 21, 2005, the Department sent another letter to Stephen T. Cook/Prudent  
8 Choice advising that Prudent Choice's application was incomplete and requesting additional  
9 information necessary for the completion of the application including but not limited to a list of  
10 all health care providers currently under contract with the Respondent, copies of advertising  
11 materials, VHS copy of Respondents' television advertisement, etc.

12 6. Said October 21<sup>st</sup> letter also reiterated the caveat that should Respondent continue to  
13 market its product, it may be subjected to disciplinary action by the Department and noted that  
14 the Department had not received, from the Respondent, the requisite security bond pursuant to  
15 Section 33-38-106, MCA.

16 7. The Respondents did not reply to the Department's inquiries. The Respondents did not  
17 complete the application for certificate of registration or supply the requested materials,  
18 information, or bond requisite for the issuance of a certificate of registration and, therefore, a  
19 certificate of registration was not issued.

20 8. This notwithstanding, Respondents continued to market, promote, sell or distribute its  
21 medical discount card product/plan subsequent to October 1, 2005, and subsequent to the  
22 Department's admonishment to cease marketing and selling its product. According to  
23 Respondents Prudent Choice enrolled 45 Montana citizens in its program between October 1,  
24 2005 and February 22, 2006.

25 9. On or about the 24<sup>th</sup> day of January, 2006, the Department received a consumer  
26 complaint that alleged Prudent Choice, a medical discount card supplier, was soliciting Montana  
27 consumers to purchase its medical care discount card program. As a result, Department  
28

1 Investigator Julie Gunlock (Gunlock) initiated an investigation into the complaint.

2 10. On or about the 10<sup>th</sup> day of February, 2006, Gunlock contacted Prudent Choice by  
3 telephoning 1-800-365-7135, and spoke with an individual who called himself "Mark.." "Mark"  
4 advised Gunlock that she had reached Prudent Choice and could participate in its medical  
5 discount plan by paying a one-time fee of \$99.00 and monthly payments of \$39.99.

6 11. Gunlock asked "Mark" to provide her with the names of all participating medical  
7 providers in the 59601 zip code area. "Mark" advised her that no providers were available in this  
8 area. "Mark" did, however, advise Gunlock that she could "nominate" any or all of her medical  
9 providers in the Helena area, and that Prudent Choice or its affiliate, Careington International  
10 Corporation, would assume responsibility for arranging for her provider's membership in the  
11 program.

12 12. Gunlock asked "Mark" if Prudent Choice was properly registered by the Montana  
13 State Insurance Commissioner. "Mark" responded by telling Gunlock, "we are licensed with the  
14 State Insurance Board." In fact, Prudent Choice was not licensed by the Montana Insurance  
15 Commissioner's office.

16 13. On or about the 10<sup>th</sup> day of February, 2006, Investigator John Forsman (Forsman)  
17 contacted Prudent Choice by telephoning 1-800-209-1141, and spoke with an individual who  
18 called himself "Mike." Forsman told "Mike" he needed coverage for typical medical office visits  
19 that active college kids go to for "sprains and sickness." "Mike" advised Forsman that a plan  
20 was available for an initial activation fee of \$99.00 and monthly fees of \$33.99 per person or  
21 \$55.99 per family.

22 14. On February 22, 2006, the Department issued a Temporary Cease and Desist Order,  
23 Notice of Agency Action and Opportunity for Hearing.

24 15. This notwithstanding, Respondents continued to market, promote, sell or distribute  
25 Prudent Choice's medical discount card product/plan subsequent to the Cease and Desist Order..  
26 According to Respondents Prudent Choice enrolled an additional 7 Montana citizens in its  
27 program after being ordered to cease and desist.

1 16. Additionally, Respondents caused Prudent Choice's television solicitation to be aired  
2 on local television stations in Helena and Great Falls which aired a total of 613 times, between  
3 August 2, 2006 and November 3, 2006, in violation of the cease and desist order. The television  
4 advertisement did not inform viewers that Prudent Choice's product was unavailable in the State  
5 of Montana.

#### 6 CONCLUSIONS OF LAW

7 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann.  
8 § 2-15-1903.

9 2. The Montana Insurance Department is under the control and supervision of the  
10 Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

11 3. The Commissioner of Insurance shall administer the Department to protect  
12 insurance consumers pursuant to Mont. Code Ann. § 33-1-311.

13 4. Pursuant to Mont. Code Ann. § 33-1-102, a person or entity may not transact the  
14 business of insurance in Montana or a business relative to a subject resident, located, or to be  
15 performed in Montana without complying with the applicable provisions of the Montana  
16 Insurance Code.

17 5. The Department has jurisdiction over this matter by reason of Respondents' offer of its  
18 medical care discount card/program to persons in Montana pursuant to Section 33-38-301, MCA,  
19 *et seq.*

20 ~~6. The plan offered and sold by Respondents constitutes a "medical care discount~~  
21 ~~card/program" because the card/plan does not constitute insurance as defined in Section 33-1-~~  
22 ~~201, MCA, and it purports to grant, for consideration, a discount or access to a discount in a~~  
23 ~~medical care-related purchase from a health care provider.~~

24 7. Respondents' are "medical care discount card supplier" as defined by Section 33-18-  
25 101(6), MCA.

26 8. Respondents repeatedly violated Section § 33-38-105(1), (5) MCA, by marketing,  
27 promoting, selling and/or distributing a medical care discount card in Montana without holding a  
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1 valid certificate of registration as a supplier.

2 9. Respondents violated Section 33-38-103(1)(a)(i)-(ii), MCA, by, *inter alia*, making  
3 misleading, deceptive and/or fraudulent representations on several occasions by representing that  
4 it offered discounts or a range of discounts, when in fact, it could legally do neither due to its  
5 failure to be properly registered with the Insurance Commissioner and the Montana Department  
6 of Insurance.

7 10. A medical care discount card supplier that markets, promotes, sells or distributes a  
8 medical care discount card in this state without a certificate of registration as a supplier issued by  
9 the Commissioner is subject to a civil penalty of not less than \$5,000.00 or more than \$25,000.00  
10 for each violation and each day of violation is considered to be a separate violation. § 33-38-  
11 105(1), (5), MCA. Respondents repeatedly violated Section 33-38-105(5), by marketing,  
12 promoting, selling or distributing its product in this state without a certificate of registration.

13 11. Pursuant to Mont. Code Ann. § 33-1-317, MCA, the Insurance Commissioner may  
14 impose an administrative fine of up to \$25,000.00 per each violation of the Montana Insurance  
15 Code or any administrative rule promulgated thereunder.

### 16 AGREEMENT

17 The Department and Respondents Prudent Choice and Stephen T. Cook *et al.* hereby  
18 stipulate and agree to the following:

19 1. The Commissioner and Department have jurisdiction over the subject matter of  
20 ~~the above entitled proceeding.~~

21 2. Respondents acknowledge that they were advised of the right to be represented by  
22 legal counsel, have exercised that right, and that said legal representation was satisfactory.

23 3. Respondents acknowledges that their authorized representative signing this  
24 Consent Agreement and Final Order has read and understands each term of this Consent  
25 Agreement and Final Order. Respondents acknowledge that they enter into this Consent  
26 Agreement voluntarily, and without reservation. Respondents stipulate and agree that the  
27 allegations contained in the Temporary Cease and Desist Order, Notice of Proposed Agency  
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1 Action and Opportunity For Hearing (License Discipline and Administrated Fines) be conformed  
2 to the allegations contained in this instrument for purposes of administrative economy.

3 Respondent acknowledges that its authorized representative signing this Consent Agreement is  
4 not under the influence of alcohol or drugs (prescription or otherwise) and that he or she does not  
5 suffer from any emotional disturbance or mental disease or defect that would render him or her  
6 not competent to sign this Consent Agreement. Respondent further acknowledges that this  
7 Consent Agreement constitutes the entire agreement between the parties and that no other  
8 promises or agreements, either express or implied, have been made by the Department or by  
9 any member, officer, agent or representative of the Department to induce Respondent to enter  
10 into this Consent Agreement.

11 4. The Department contends as set forth in the preceding Fact Assertions and  
12 Conclusions of Law and Respondent admits the same. The Department and Respondent have  
13 elected to resolve these matters as follows:

14 (a) Respondents have ceased enrolling Montana citizens in their program and  
15 have ceased marketing, promoting, selling or distributing their medical care discount card in this  
16 state and agrees not to market, promote sell or distribute its medical care discount card in this  
17 state during for the suspension period of five years as set forth in this agreement and thereafter  
18 unless and until it fully performs all conditions set forth in this agreement, applies for and  
19 receives a certificate of registration and complies with Montana law in all respects;

20 (b) Respondents have conspicuously given notice to Montana consumers that - - - - -  
21 their product is not available in the State of Montana on Respondent's web site and have  
22 blocked all (406) area code calls to prevent Montana Consumers from purchasing  
23 Respondents' product.

24 (c) Respondents agree to discontinue television advertisements that air or may  
25 be aired in this state without first noticeably, legibly and conspicuously informing the viewer  
26 that the Prudent Choice product is not available in the State of Montana unless and until all  
27 conditions agreed to by Respondents in this agreement are fully performed, and unless it  
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1 applies for and receives a certificate of registration.

2 (d) Respondents agree to offer full refunds to all of its Montana Customers and  
3 to provide proof to the Department of their offer and proof of refunds made.

4 (e) Respondents agree to reimburse Montana residents 15% of all medical  
5 expenses paid by Montana residents while they were active members of the PrudentChoice  
6 discount healthcare plan. The maximum amount of reimbursement per membership (family or  
7 individual) shall not exceed \$300.00. In order to qualify for the reimbursement, verifiable  
8 proof of the medical bills incurred and proof of payment must be submitted within six months  
9 of the execution date of this agreement. PrudentChoice will have 10 days to verify the  
10 submitted bill and proof of payment or seek additional documentation or it will be deemed  
11 accepted. All submitted expenses must have been incurred while the member was an active  
12 and paid member of the PrudentChoice discount healthcare plan and the expense must be one  
13 that is customarily discounted by the plan.

14 (f) Respondents consent to a cease and desist all marketing, promoting, selling  
15 or distribution of its medical care discount card in the State of Montana for a period of five years  
16 before Respondents may re-apply for a certificate of registration.

17 (g) For violations of Mont. Code Ann. §§ 33-1-102, 33-38-103, MCA, the  
18 Department may impose a maximum fine of \$25,000.00 per each violation pursuant to Mont.  
19 Code Ann. § 33-1-317, MCA. Additionally, Respondents are subject to a civil penalty of not less  
20 than \$5,000.00 or more than \$25,000.00 for each violation of Section 33-38-105(1) and each-day  
21 of violation is considered to be a separate violation. § 33-38-105(1), (5), MCA. For all  
22 violations set forth herein above, Respondent will pay an administrative fine of \$150,000.00,  
23 with all but \$75,000.00 suspended, to the Department within six (6) months following the  
24 signing of the Final Order in this matter. Respondent agrees to pay said fine in monthly  
25 installments of Twelve Thousand Five Hundred Dollars (\$12,500.00) per month beginning at  
26 the time of the execution of this instrument and continuing thereafter on a regular monthly  
27 schedule until paid in full. Respondent agrees to pay the remaining \$75,000.00 of the  
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1 administrative fine if within the 5 years following the signing of the Final Order Respondent  
2 fails to comply with the Montana Insurance Code and/or the administrative rules promulgated  
3 thereunder. The failure of Respondent to comply during this time period will be determined in  
4 a subsequent legal (administrative, civil and/or criminal) proceeding by the Commissioner,  
5 Department, and/or State of Montana which need not be concluded within 2 years following  
6 the signing of the Final Order in this matter. The remaining \$75,000.00 of Respondent's  
7 administrative fine will be due within 30 days following the determination of Respondent's  
8 failure to comply with the terms and conditions of this agreement;

9 (h) The Department and Respondents agree that this Consent Agreement and  
10 Final Order resolves the violations set out herein;

11 (i) Respondents specifically and affirmatively waive a contested case  
12 hearing and all rights to appeal under the Montana Administrative Procedure Act, and elect to  
13 resolve this matter on the terms and conditions set forth herein;

14 (j) Respondents agree that compliance with this Consent Agreement and  
15 Final Order shall be a final compromise and settlement of the matters set forth herein;

16 (k) Respondents fully and forever release and discharge the Commissioner,  
17 Department, and all Department employees from any and all actions, claims, causes of action,  
18 demands, or expenses for damages or injuries, whether asserted or unasserted, known or  
19 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this  
20 Consent Agreement; and

21 (l) The Department and Respondent agree that this Consent Agreement shall  
22 be incorporated and made a part of the attached Final Order issued by the Commissioner herein.

23 5. Respondents further understand that, upon the signing of the Final Order by the  
24 Commissioner or his representative, this Consent Agreement and Final Order will be an order  
25 of the Commissioner and failure to comply with the same may constitute separate violations of  
26 the Montana Insurance Code, pursuant to Mont. Code Ann. § 33-2-119 and/or other applicable  
27 statutes or rules, and may result in subsequent legal action by the Department.



6. Respondent understands that this Consent Agreement is not effective until such time as the following Final Order is signed.

7. Respondent understands that this Consent Agreement and Final Order are public records under Montana law and as such may not sealed or otherwise withheld from the public.

PRUDENT CHOICE, STEPHEN COOK

By: \_\_\_\_\_

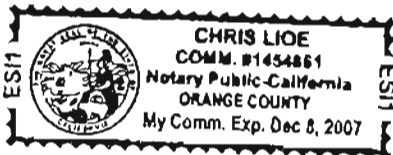
Its: \_\_\_\_\_

Date

5/23/07

Subscribed and Sworn to before me this 23 day of May, 2007.

(SEAL)



(Signature)

(Printed name)

Notary Public for the State of California

Residing at Orange

My commission expires 12/8/07

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

Michael Winsor

Special Assistant Attorney General

Date

5/1/07

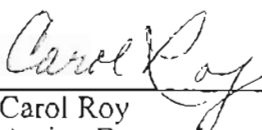
1 FINAL ORDER

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 2-4-  
3 603, MCA and § 33-1-101, MCA, *et seq.*, and upon review of the forgoing Consent Agreement  
4 and Final Order and good cause appearing therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between the Insurance  
6 Department and Prudent Choice and Stephen T. Cook hereby adopted as if set forth fully herein.

7 DATED this 29th day of May, 2007.

8  
9 JOHN MORRISON  
10 State Auditor and Commissioner of Insurance

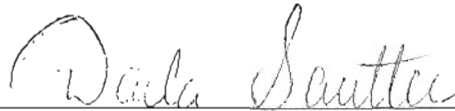
11   
12 By: Carol Roy  
13 Acting Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of MAY, 2007, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondent and Department, by mail, postage prepaid, at the following address:

Craig Zimmerman, Esq.  
23053H Alicia Parkway, #104  
Mission Viejo, CA 92692  
(Legal Counsel for Respondent)

Michael Winsor  
Special Assistant Attorney General  
Insurance Department



Darla Sautter